



U.S. Department of Justice

Immigration and Naturalization Service

F1

OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File:

[Redacted]

Office: New York

Date:

NOV 1 2000

IN RE:

Petitioner:

[Redacted]

Beneficiary:

Petition: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

IN BEHALF OF PETITIONER:

[Redacted]

Public Copy

Identifying data needed to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

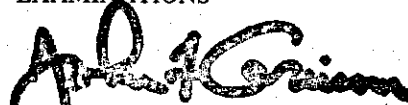
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Ferrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The visa petition to classify the beneficiary as an immediate relative was denied by the District Director, New York, New York. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the district director will be withdrawn and the petition remanded for further action.

The petitioner is a 45 year-old citizen of the United States, who had one previous marriage. The beneficiary, who at this time is 21 years of age, was born in Manchester, Jamaica, on April 4, 1979. The beneficiary's biological father [REDACTED] is said to be deceased. The beneficiary's biological mother [REDACTED] has signed an irrevocable release and states that she is incapable of providing for the beneficiary's proper care, and therefore, has irrevocably released her child for emigration and adoption. The district director denied the petition because it was filed when the beneficiary was 16 years of age.

On appeal, counsel states that the petition was delivered to the Service on April 3, 1995. Counsel also states that the beneficiary was lawfully orphaned and that the petitioners are qualified to petition for the beneficiary.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F), defines orphan in pertinent part as:

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by an United States citizen and spouse jointly...who personally saw and observed the child prior to or during the adoption proceedings....

The regulation at 8 C.F.R. 103.2(a)(7)(i) states that:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as properly filed when so stamped, if it is properly signed and executed and the required fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will

not retain a filing date. An application or petition taken to a local Service office for the completion of biometric information prior to filing at a Service Center shall be considered received when physically received at a Service Center.

In this case, the stamp on the Petition to Classify Orphan as an Immediate Relative (Form I-600) reflects the petition was received on April 3, 1995. The fee receipt was generated on April 10, 1995 but the application was filed on April 3, 1995. On April 3, 1995, the beneficiary was under 16 years of age. Therefore, the beneficiary is eligible to file the petition, however, the petition cannot be approved for other reasons.

The record of proceeding contains two letters in which the writers state that the beneficiary's biological father, [REDACTED] is deceased. The letter dated August 21, 1996, signed by the Justice of the Peace, [REDACTED] states the date of the beneficiary's biological father's death is September 21, 1978. The other letter which is not dated and signed by the [REDACTED] states that the beneficiary's biological father died in September of 1978.

The record of proceeding contains two death certificates. One death certificate indicates that [REDACTED] died in [REDACTED] hospital on September 21, 1980. This certificate was certified to be a true copy of the original on June 12, 1995. The other death certificate indicates that [REDACTED] died in [REDACTED] hospital on September 21, 1978. However, the year 1980 was crossed out and 1978 was written in its place. This certificate was certified to be a true copy of the original on March 7, 1997.

Further, the photograph of the beneficiary's biological father's tomb shows his name as [REDACTED] born June 2, 1957 and died September 21, 1978.

The discrepancies exist in the spelling of the beneficiary's father's name and his actual date of death. The beneficiary's birth certificate does not state the name of his father. No other documentary evidence establishing the biological father's identity has been submitted other than a letter written by [REDACTED] where he mentions that sometime before his death, [REDACTED] was involved in a relationship with [REDACTED] who gave birth to a child, [REDACTED] a number of months after his death. Therefore, the petitioner has not established that [REDACTED] or [REDACTED] is the beneficiary's biological father and is presently deceased. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to

where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

Furthermore, the record does not contain proof of legal termination of the petitioner's first marriage, a home study, evidence that the surviving parent is incapable of providing for the beneficiary's care and evidence of compliance with preadoption requirements, if any, of the State of the beneficiary's proposed residence.

Since these deficiencies were not reflected in the district director's decision, the petitioner will be afforded an opportunity to submit such evidence. As in any relative petition proceeding, the burden of proof is on the petitioner to establish eligibility for classification as an orphan. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The district director's decision is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.